

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID SOLARES and KEVIN MARK KIRKLAND

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Appeal No. 2004-1403  
Application No. 09/908,224

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ON BRIEF

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Before KRATZ, TIMM, and JEFFREY T. SMITH, Administrative Patent Judges.

KRATZ, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to a request, filed August 30, 2004, for rehearing of our decision, mailed June 30, 2004, wherein we affirmed the examiner's decision rejecting all appealed claims under 35 U.S.C. § 102(b) as being anticipated by Harpell.

In the subject request, the appellants argue that our decision with respect to our affirmance of the examiner's

anticipation rejection of claim 71 is based on an erroneous claim interpretation.

Appellants maintain that a projectile is an implicit part of the claimed armor system. In support, appellants furnish an alleged schematic illustration of comparative Example 3<sup>1</sup> and Example 4 of their specification. Appellants argue, in effect, that the illustrated systems are not congruent when claim 71 is properly interpreted as including the illustrated projectile as being part of the armor system required by claim 71.

During prosecution of a patent application, the terms in a claim are given their broadest reasonable interpretation consistent with the specification. In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984). Although no limitations in the specification are normally imputed to the claims being interpreted, see In re Paulsen, 30 F.3d at 1480, 31 USPQ2d at 1674, the specification can still be used to impart the meaning of words in the claims, see In re Barr, 444 F.2d 588, 593, 170 USPQ 330, 335 (CCPA 1971).

Here, we determine that appellants' claim construction argument is directly contrary to the appellants' own

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<sup>1</sup> Appellants' acknowledge that comparative Example 3 follows the teachings of the applied Harpell patent (Request, page 2 and specification, paragraph bridging pages 9 and 10).

specification in that the projectile fragments were described as being used to test the armor system, rather than being an implicit part of the armor system, as alleged in the Request. See, e.g., page 26, lines 12-18 and page 27, lines 12-29 and page 29, lines 4-16 of appellants' specification.

In light of the foregoing, it is apparent that the above discussed argument concerning an alleged erroneous claim interpretation is not reasonably supported by the record that was before us in deciding this appeal. In rendering our decision, we appropriately construed claim 71 giving that claim the broadest reasonable construction that is consistent with appellants' specification. As appellants acknowledge (Request, page 2, last paragraph), claim 71 is not limited to the three layer embodiment described at page 6, lines 32-36 of their specification. Consequently, the armor system of claim 71 comprising two layers is the same armor system whether a projectile is fired at the armor system to impact the first layer first or the second layer first, albeit that armor system may perform differently depending on which layer is impacted first.

The language in claim 71 respecting the arrangement of the armor system first layer relative to a projectile to be received manifestly does not describe the projectile as part of that armor

system. Rather, it is plain from reading claim 71 that the claim language in question is merely descriptive of the impact resistance of the first layer, described in terms of when that layer receives an impact from a projectile before the second layer of the armor system, not an imputation of a projectile as an implicit component part of the claimed armor system.

For the above stated reasons, we will not alter our decision, mailed June 30, 2004, as urged by the appellants in their Request.

The Request for Rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING - DENIED

PETER F. KRATZ	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
CATHERINE TIMM	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
JEFFREY T. SMITH	)	
Administrative Patent Judge	)	

PFK/sld

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